

IN THE SUPREME COURT OF THE STATE OF DELAWARE

OWEN WARRINGTON, <sup>1</sup>	§
	§ No. 554, 2009
Respondent Below-	§
Appellant,	§
	§ Court Below—Family Court
v.	§ of the State of Delaware
	§ in and for New Castle County
DEPARTMENT OF SERVICES	§ Petition Nos. CN02-10399
FOR CHILDREN, YOUTH AND	§ 08-12-02TN
THEIR FAMILIES,	§ File Nos. 07-40045
	§ 08-38524
Petitioner Below-	§
Appellee.	§

Submitted: May 10, 2010

Decided: June 24, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

**ORDER**

This 24<sup>th</sup> day of June 2010, upon consideration of the appellant’s brief filed pursuant to Supreme Court Rule 26.1, his attorney’s motion to withdraw, and the response of the appellee, the Department of Services for Children, Youth and their Families (“DSCYF”), it appears to the Court that:

(1) The respondent-appellant, Owen Warrington (“Father”), has filed an appeal from the Family Court’s August 27, 2009 order terminating his parental

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<sup>1</sup> The Court *sua sponte* assigned pseudonyms to the parties by Order dated September 23, 2009. Supr. Ct. R. 7(d).

rights (“TPR”) in his minor child, Timmy.<sup>2</sup> On appeal, Father’s counsel has filed an opening brief and a motion to withdraw pursuant to Supreme Court Rule 26.1.<sup>3</sup> Father’s counsel submits that she is unable to present a meritorious argument in support of the appeal. Despite being afforded an opportunity to do so, Father has submitted no points for this Court’s consideration. DSCYF has moved to affirm the Family Court’s judgment. For the reasons that follow, we conclude that the judgment of the Family Court must be affirmed.

(2) The record reflects that Timmy, born August 17, 2001, entered the care of the Division of Family Services (“DFS”) on December 21, 2007. Because of safety concerns, Timmy was removed from the care of his biological mother (“Mother”) and placed with a relative pending a criminal investigation into the death of his three month-old sister. Timmy, then only five years old, had been told by Mother to watch his baby sister. When the baby accidentally fell from a sofa, she suffered injuries that led to her death. Mother later pleaded guilty to endangering the welfare of a child in connection with the incident.

(3) At a preliminary protective hearing in December 2007, the Family Court continued legal custody of Timmy with DFS and physical custody with the relative. At an adjudicatory hearing in March 2008, the Family Court found

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<sup>2</sup> The Court hereby assigns a pseudonym to the minor child. The Family Court also terminated the parental rights of Timmy’s mother.

<sup>3</sup> Rule 26.1 provides for the continuing obligation of the appellant’s trial counsel in an appeal from a termination of parental rights.

Timmy to be dependent. Subsequently, due to interference by Mother and her boyfriend, the relative was no longer willing to care for Timmy and, in June 2008, Timmy was placed with a foster family, where he remains to this day. At a dispositional hearing in July 2008, the case plan for Mother's reunification with Timmy was entered as a Family Court order.

(4) In November 2008, Father contacted DFS and stated that he had suspected for some time that he might be Timmy's biological father. Until then, Father had played no role whatsoever in Timmy's life. Paternity testing confirmed Father's suspicions. In February 2009, Father was added as a party to the litigation. Ms. Deon Toon, a caseworker with DFS, subsequently met with Father. Toon told Father that, because Timmy had already been in foster care for over a year and a half, and was unaware of Father's existence, Father would be expected to follow through with his case plan quickly. Toon stressed to Father the importance of his appearing at the next scheduled hearing on May 18, 2009. She wrote the date and time of the hearing on the back of her business card and gave it to Father. Father failed to appear. As a result, Toon was unable to provide him with a copy of his case plan on that date, as she had planned. DFS filed its TPR petition on May 21, 2009.

(5) Father finally received and signed his case plan on June 2, 2009 at a permanency hearing in the Family Court. Despite the filing of the TPR petition,

the judge maintained the goal of Father's case plan as reunification. Under the plan, Father was to obtain employment, complete the Strength in Families parenting class, complete a substance abuse evaluation due to his past drug convictions, follow through with any needed drug treatment, and obtain appropriate housing, all with a view toward ultimately visiting Timmy in a therapeutic setting.

(6) At a July 2009 review hearing, the Family Court ordered that custody of Timmy would remain with DFS and that reunification would remain the goal of Father's case plan. While Father was present at the hearing, it was clear that he had done little to accomplish the goals of his case plan. He had cancelled the appointment with DFS for a home assessment and did not make any effort to reschedule the appointment. He could produce no evidence of serious attempts to find stable employment. He was absent for a month from the home address he had provided to DFS and had provided no forwarding address. He, finally, had not shown up for all of his parenting classes.

(7) While living with his foster family, Timmy had been diagnosed with multiple problems, among them post traumatic stress disorder, oppositional defiant disorder, and attention deficit and hyperactivity disorder. Although unjustified, he felt tremendous guilt over the death of his baby sister. Timmy also believed that his father was a man other than Father. Because of the probable emotional trauma

for Timmy should he be told of the existence of Father, the Family Court consistently required Father to demonstrate good faith in implementing his case plan before any visitation with Timmy could occur.

(8) On August 24, 2009, DFS's TPR petition against Mother and Father proceeded to trial in the Family Court. The basis for the TPR petition regarding Father was failure to plan. Despite being properly notified of the trial date, Father failed to appear. The transcript of the hearing reflects the following. The judge described her interview with Timmy, who was then eight years old. The judge found Timmy to be a charming child with lovely manners. When asked, Timmy stated that he got his manners from his foster mother. Timmy stated that he loved his foster family and wanted to continue living with them.

(9) Candace Bush, a therapist with the Brandywine Program, testified that she had seen Timmy once a week for therapy since February 10, 2009. She stated that Timmy had made progress with his mental health issues and that the care and structure his foster family had provided had been the key to his progress. She also stated that Timmy's foster parents had become very attached to him and wished to adopt him. Bush, finally, testified that Timmy would have great difficulty adapting to having Father in his life at that point and that having visitation with Father would likely be harmful to his emotional stability.

(10) Deon Toon, the DFS case worker, testified concerning her conversations with Father and her many failed attempts to contact him and assist him in meeting the goals of his case plan. Toon also stated that Timmy had a strong relationship with his foster family and, in particular, with his foster mother. Timmy told her that he wanted his foster parents to adopt him. Toon, finally, described the various types of counseling Timmy had received since entering foster care and how his mental health issues had improved.

(11) Timmy's foster mother also testified. She stated that she had raised three sons who are now productive members of society. She stated that she loved Timmy as if he were her own child and wanted to adopt him. She stated that, when Timmy first came to her on June 9, 2008, he was uncomfortable, unhappy and distrustful. However, through months of living with her family and receiving support and counseling, Timmy had become a happy child who enjoyed school, participated fully in activities and loved his foster family. She also stated that, because Timmy still enjoyed visiting with his biological siblings, she would arrange for that to continue, should she be permitted to adopt Timmy.

(12) In its order terminating Father's parental rights, the Family Court found that DSCYF/DFS had established by clear and convincing evidence that Father's parental rights should be terminated for failure to plan<sup>4</sup> and that it was in

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<sup>4</sup> Del. Code Ann. tit. 13, §1103(a).

Timmy's best interests for the Father's rights to be terminated so that he might be eligible for adoption.<sup>5</sup> In her comments on the record following the hearing, the judge noted that, because Father was identified as Timmy's biological father relatively late in the termination process, he was given latitude to demonstrate his good faith in carrying out his case plan. Even after the TPR petition had been filed, the goal of Father's case plan remained reunification. Moreover, the DFS case worker had been aggressive in her efforts to assist Father in carrying out the goals of his case plan, to no avail. Finally, the judge noted that she would have been inclined to postpone the termination hearing itself if Father had shown any interest in being a father to Timmy. The record in this case reflects that the judge expended much time and energy in talking to Father and admonishing him of the importance of quickly implementing the goals of his case plan.

(13) This Court's review of the Family Court's decision to terminate parental rights entails consideration of the facts and the law as well as the inferences and deductions made by the Family Court.<sup>6</sup> To the extent that the Family Court's rulings of law are implicated, our review is *de novo*.<sup>7</sup> The Delaware statute governing the termination of parental rights requires a two-step

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<sup>5</sup> Del. Code Ann. tit. 13, §722(a). The grounds for the Family Court's decision were stated at length in the trial transcript. The record reflects that the appellant requested, and was granted, a copy of the judge's rulings at State expense.

<sup>6</sup> *Wilson v. DFS*, 988 A.2d 435, 439-40 (Del. 2010) (citing *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983)).

<sup>7</sup> *Id.* at 440.

analysis.<sup>8</sup> First, there must be proof of a statutory basis for termination.<sup>9</sup> Second, there must be a determination that termination of parental rights is in the best interests of the child.<sup>10</sup> Both requirements must be established by clear and convincing evidence.<sup>11</sup>

(14) We have carefully reviewed the parties' submissions as well as the record below, including the transcript of the TPR hearing. We conclude that there is ample evidence in the record supporting the Family Court's termination of Father's parental rights, both on the statutory ground of Father's failure to plan and on the ground that such termination is clearly in the best interests of Timmy. There was no error or abuse of discretion on the part of the Family Court.

NOW, THEREFORE, IT IS ORDERED that the motion of DSCYF to affirm is GRANTED. The judgment of the Family Court is AFFIRMED. The appellant's attorney's motion to withdraw is moot.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice

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<sup>8</sup> Del. Code Ann. tit. 13, §1103 (listing grounds for termination of parental rights); *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

<sup>9</sup> *Id.*

<sup>10</sup> *Shepherd v. Clemens*, 752 A.2d at 537; Del. Code Ann. tit. 13, §722(a) (listing best interests factors).

<sup>11</sup> *Powell v. DSCYF*, 963 A.2d 724, 731 (Del. 2008).